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C O N F I D E N T I A L HARARE 000428

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NSC FOR SENIOR AFRICA DIRECTOR C. COURVILLE

E.O. 12958: DECL: 12/31/2010
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SUBJECT: ELECTORAL COURT HOLDS BENNETT ELIGIBLE

REF: (A) 04 HARARE 1943 (B) 04 HARARE 1787 (C) 04
HARARE 682

Classified By: Charge d'Affaires a.i. Eric T. Schultz under Section 1.4
b/d

1. (U) In its first decision since it was appointed last month, Zimbabwe's Electoral Court announced March 15 that MDC MP Roy Bennett will be permitted to run for his Chimanimani seat. Electoral Court Judge Tendai Uchena overturned the Chimanimani nomination court's refusal on February 18 to certify Bennett as a candidate. Bennett's earlier disqualification hinged on his "conviction" by Parliament and sentencing to one year imprisonment over his assault of Minister for Justice, Legal and Parliamentary Affairs Patrick Chinamasa on the floor of Parliament last year (refs A and B).

2. (U) The Constitution disqualifies an individual convicted by a court and sentenced to more than six months imprisonment from serving in Parliament. However, the Electoral Court ruled that Bennett, who was convicted by Parliament and not a court, remained qualified to run despite his continuing incarceration. The Court ordered that the nomination court be reconvened on April 4 to consider papers of candidates, with polling to be postponed from March 31 to April 30.

3. (C) One of Bennett's lawyers told us that he had been told by opposing counsel that an appeal was unlikely. Bennett's lawyer noted that the three-judge Electoral Court sitting en banque - not the ZANU-PF-dominated Supreme Court - would hear an appeal if one were filed.

Comment

4. (C) The Court's first decision is as surprising as it is encouraging. Many local observers did not expect it to buck the GOZ at all, let alone in its first decision. Moreover, removing Bennett - a white commercial farmer who is very popular in a rural constituency the ruling party considers part of its heartland - has been a high ZANU-PF priority and the decision is sure to infuriate the party leadership. Whether the ruling party has another trick up its sleeve to exclude Bennett remains to be seen. The Court also acted with unusual dispatch. Bennett filed the case shortly after the adverse February 18 ruling and the Court took less than three weeks to reach a decision. This is in marked contrast to the electoral disputes from the 2000 election, many of which have yet to be concluded five years later. The Court's ability to continue this sort of activism may be limited by its lack of a budget or supporting secretariat. That said, it apparently will not be limited by a lack of political will -- a most welcome development.

SCHULTZ